

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TERRI ESPINOZA, No C 07-3115 VRW

Plaintiff,

ORDER

v

MICHAEL J ASTRUE, Commissioner of  
Social Security

Defendant.

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On June 13, 2007, plaintiff Terri Espinoza, acting pro se, filed this action, together with the filing fee, seeking judicial review of the final determination of the decision of the Social Security Administration denying her application for social security benefits.

On the same date, the "Procedural Order for Social Security Actions" of the United States District Court for the Northern District of California was filed in the court's file for this action and served on plaintiff. Doc # 3. That order sets forth five procedural steps pursuant to Civil Local Rule 16-5, below. Of relevance here, the second such step is that plaintiff is required to serve and file a motion for summary judgment or for remand within thirty days of service of defendant's answer.

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1                   On February 6, 2008, defendant commissioner filed his  
2 answer together with the administrative transcript. Doc # 4.  
3 Plaintiff failed to file her motion for summary judgment as required  
4 by the court's Procedural Order and Local Rule 16-5.

5                   Civil Local Rule 16-5 governs procedure in actions for  
6 review on an administrative record and provides in pertinent part:

7                   Within 30 days of receipt of defendant's answer,  
8 plaintiff must file a motion for summary judgment  
9 pursuant to Civil LR 7-2 and FRCP 56. Defendant  
10 must serve and file any opposition or counter-motion  
11 within 30 days of service of plaintiff's motion.  
12 Plaintiff may serve and file a reply within 14 days  
13 after service of defendant's opposition or counter-  
14 motion.

15                   Plaintiff's failure to file a motion for summary judgment  
16 may warrant dismissal for failure to prosecute pursuant to FRCP  
17 41(b). Plaintiff's pro se status is not an excuse. "Pro se  
18 litigants must follow the same rules of procedure that govern other  
19 litigants." King v Atiyeh, 814 F2d 565, 567 (9th Cir 1987). Lack  
20 of knowledge of the applicable rules and procedures is no excuse for  
21 failure to comply with those rules. See Swimmer v IRS, 811 F2d  
22 1343, 1344 (9th Cir 1987).

23                   Accordingly, plaintiff is now ordered to file her summary  
24 judgment motion on or before April 11, 2008 or show cause why the  
25 court should not dismiss this action for failure to prosecute  
26 pursuant to Rule 41(b). Should plaintiff fail to respond to this  
27 order in a timely fashion, the matter will be dismissed.

28                   IT IS SO ORDERED.

  
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30                   VAUGHN R WALKER  
31                   United States District Judge